

1

2 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY OF MS.  
3 ROSEMARIE CLAYTON?

4 A. Yes.

5

6

**III. Mr. Richard J. McCusker, Jr.**

7

8 Q. DO YOU PERCEIVE THAT MR. MCCUSKER IS APPROPRIATELY  
9 QUALIFIED AND SUFFICIENTLY FAMILIAR WITH THE FACTS  
10 PERTINENT TO CLOSECALL'S COMPLAINT TO PROVIDE CREDIBLE  
11 TESTIMONY IN THIS PROCEEDING?

12 A. Yes. Mr. McCusker appears proficient and knowledgeable with respect to  
13 the facts, terms and terminology that he uses in his rebuttal Testimony.  
14 Unfortunately, Mr. McCusker must support an untenable position, that  
15 voice messaging is alternately an interexchange information service and a  
16 feature of local telephone service, depending entirely on which  
17 perspective is most favorable to Verizon in a given situation.  
18 Consequently, while I have no objections to Mr. McCusker's qualifications,  
19 I must object to the lack of consistency in his arguments.

20

21 Q. DO YOU AGREE WITH MR. MCCUSKER'S STATEMENT THAT, "VOICE  
22 MESSAGING IS AN ADDITIONAL FEATURE THAT VERIZON MAKES  
23 AVAILABLE TO ITS LOCAL EXCHANGE VOICE CUSTOMERS?"

1 A. No. It is difficult to agree with Mr. McCusker's characterization of voice  
2 messaging because his arguments are contradictory. First, Mr. McCusker  
3 states that Verizon's voice messaging service is an "interstate information  
4 service." Mr. McCusker then argues that voice messaging is not a distinct  
5 service at all, but that it is a "local service feature" that Verizon makes  
6 available to its local telephone customers.

7  
8 Q. WHY WOULD MR. MCCUSKER MAKE SUCH CONTRADICTIONARY  
9 CLAIMS?

10 A. Mr. McCusker is boxed into these contradictory claims because he is  
11 trying to defend a policy pursuant to which Verizon is trying to get the best  
12 of both worlds without accepting the associated duties and obligations. If  
13 voice messaging is truly an "unregulated" interstate information service,  
14 then it has no specific relationship to local telephone service and should  
15 be sold as a separate stand-alone service in the same manner as any  
16 long distance telephone carrier (e.g. AT&T) or information service provider  
17 (e.g. AOL) makes its service available to all potential customers on  
18 consistent terms and conditions. However, Verizon, as represented by  
19 Mr. McCusker, does not want to admit that voice messaging is, in fact, a  
20 stand-alone service, because Verizon would then be required to continue  
21 to provide voice messaging service to customers after they have switched  
22 to a competing local telephone service provider, such as CloseCall.  
23 Consequently, Mr. McCusker attempts to argue that voice messaging is

1           merely an additional service that is part and parcel of Verizon's "regulated"  
2           local telephone service offering.

3

4    Q.    IF VOICE MESSAGING IS AN ADDITIONAL SERVICE FEATURE THAT  
5           VERIZON MAKES AVAILABLE TO ITS LOCAL TELEPHONE  
6           CUSTOMERS, AS MR. MCCUSKER ARGUES, WHAT IS VERIZON'S  
7           DUTY TO CLOSECALL?

8    A.    Verizon's duty would be to make voice messaging available to CloseCall  
9           in the same manner that it provides CloseCall with access to other local  
10          telephone service "features," such as call waiting and caller-ID. Just as it  
11          does call waiting and caller ID, CloseCall would simply submit an order to  
12          Verizon that indicates "Conversion as is." This option is currently part of  
13          the Verizon ordering process, but Verizon refuses to recognize it in  
14          relation to voice messaging. Recognizing this option with respect to that  
15          service would prevent the service disruption problems currently caused by  
16          Verizon's unilateral termination of voice messaging.

17

18   Q.    WOULD THIS THEN END CLOSECALL'S COMPLAINT WITH VERIZON  
19          FOR BLOCKING CLOSECALL'S SELLING OF LOCAL TELEPHONE  
20          SERVICE IN MARYLAND TO CUSTOMER'S THAT ALSO HAVE  
21          VERIZON VOICE MAIL SERVICE?

22   A.    Yes.

23

1 Q. IF VOICE MESSAGING IS ACTUALLY AN INTERSTATE INFORMATION  
2 SERVICE, AS MR. MCCUSKER ALSO CLAIMS, WHAT WOULD BE  
3 VERIZON'S DUTY TO ITS VOICE MESSAGING CUSTOMERS?

4 A. Verizon's duty would be to continue offering voice messaging service until  
5 its customer decided to terminate the service or the customer were to take  
6 an action that would justify Verizon's suspension or termination in  
7 accordance with the federal or state commission rules (e.g., failure to pay  
8 for the service or intentional or illegal misuse of the service). However,  
9 Verizon would be precluded from unilaterally canceling a customer's voice  
10 messaging service in retaliation for the customer's decision to subscribe to  
11 a competitor's local telephone service, such as that provided by CloseCall.

12

13 Q. WOULD THIS RESOLVE CLOSECALL'S COMPLAINT AGAINST  
14 VERIZON REGARDING VERIZON'S IMPROPER RESTRAINTS ON  
15 CLOSECALL'S EFFORTS TO SELL OF LOCAL TELEPHONE SERVICE  
16 IN MARYLAND TO CUSTOMERS THAT SUBSCRIBE TO VERIZON'S  
17 INTERSTATE INFORMATION SERVICE?

18 A. Yes.

19

20 Q. CAN MR. MCCUSKER HAVE IT BOTH WAYS?

21 A. No. Verizon has to decide whether it believes that voice messaging is an  
22 element of local telephone service or that voice messaging is a stand-  
23 alone interstate service. Otherwise, the Commission must make that

1 choice for Verizon. Either way, Verizon must revise its policies and  
2 practices to make them correspond in a consistent manner with that  
3 decision. Verizon can sell voice messaging as an interstate information  
4 service or sell it as a local telephone feature. Under either choice,  
5 CloseCall's Complaint regarding Verizon's voice messaging practices and  
6 policies would be easily solved.

7  
8 Q. DO YOU AGREE WITH MR. MCCUSKER THAT "MR. MAZERSKI HAS  
9 NOT DEMONSTRATED ANY PROBLEM THAT NEEDS FIXING?"

10 A. No. Mr. McCusker's conclusion rests entirely on the faulty calculations  
11 and presumptions upon which Mr. Charlton bases his testimony. As I  
12 explained earlier, Mr. Charlton's calculations are erroneous, misleading  
13 and constitute a clear misuse of the data that Verizon requested from  
14 CloseCall. His calculations are apples versus oranges. In addition, at  
15 Verizon's request, CloseCall has provided documentation clearly showing  
16 that it is unable to fulfill 10.5% of the local telephone service orders it  
17 receives specifically because of Verizon's anticompetitive practice of  
18 terminating and refusing to reconnect the voice mail service of former  
19 Verizon local telephone service customers.

20  
21 Q. HAS CLOSECALL ESTIMATED THE AMOUNT OF REVENUE LOST  
22 DUE TO VERIZON'S ANTI-COMPETITIVE TACTICS?

1 A. Yes. CloseCall, at Verizon's request, has sent Verizon these details. At  
2 the time I filed my direct testimony, CloseCall documented lost business of  
3 \$1,092,000. On a going forward basis, CloseCall is losing approximately  
4 \$114,000 of additional revenue per month because of Verizon's continued  
5 "tie-in" tactics.

6  
7 Q. CONTRARY TO MR. MCCUSKER'S TESTIMONY, DOES THIS  
8 DEMONSTRATE THERE IS SOMETHING THAT NEEDS FIXING?

9 A. Yes.

10  
11 Q. DO YOU AGREE WITH MR. MCCUSKER'S STATEMENT THAT  
12 "VERIZON DOES NOT MARKET OR SELL ITS VOICE MESSAGING AS  
13 A STAND-ALONE RETAIL SERVICE?"

14 A. No. Mr. McCusker admits that Verizon has an agreement with at least  
15 one other CLEC, LightYear Communications, under which it sells voice  
16 messaging services. Verizon has so far refused to produce that  
17 agreement in response to CloseCall's request, however on October 18,  
18 2002 was finally ordered to do so by the Hearing Examiner in this case. In  
19 addition, Verizon refuses to provide similar terms to competitive carriers,  
20 including CloseCall, despite the fact that this refusal appears to violate the  
21 FCC's Section 252(i) "pick and choose" rule which gives competing  
22 carriers the right to demand that an incumbent local exchange carrier  
23 ILEC make available to it any individual interconnection, service or

1 network element arrangement that the incumbent provides to any other  
2 carrier. CloseCall is also learned, in the course of discussions with  
3 Verizon employees, that similar "preferred" agreements exist with other  
4 CLECs, such as CTC Communications and USN. Verizon may have  
5 other, "secret" arrangements, but we cannot know for sure at this point  
6 because Verizon has so far refused to respond in a meaningful way to our  
7 request for this additional information. In addition, I am aware that Verizon  
8 has entered agreements with various sales agents for the sale of  
9 Verizon's voice messaging services.

10  
11 Q. DO YOU AGREE WITH MR. MCCUSKER THAT "THE AGREEMENT  
12 WITH LIGHTYEAR PROHIBITS VERIZON FROM DIVULGING ITS  
13 CONTRACTS TO THIRD PARTIES, "EXCEPT IF [VERIZON IS]  
14 REQUIRED TO DO SO BY APPLICABLE LAW," ACCORDINGLY, I [MR.  
15 MCCUSKER] AM NOT AT LIBERTY TO DISCUSS THE SPECIFIC  
16 TERMS OF THAT AGREEMENT?"

17 A. No. Verizon and Mr. McCusker are required by the Maryland Commission  
18 to file and request Commission approval of all interconnection  
19 arrangements with CLECs that relate to the provisioning of local telephone  
20 service. As noted above, this state requirement was mandated by the  
21 Telecommunications Act of 1996 and was affirmed by the Supreme Court  
22 of the United States in the famous AT&T v. Iowa Utilities Board case.  
23 525 US 366 (1999). Verizon appears to have violated this requirement,

1       which was created for the specific purpose of preventing secret deals and  
2       anticompetitive discrimination that would otherwise distort the competitive  
3       landscape in Maryland.

4  
5   Q.   HOW DOES VERIZON'S SECRET DEALS WITH LIGHTYEAR AND  
6       OTHER COMPANIES INFLUENCE THE BALANCE OF COMPETITION  
7       IN MARYLAND AND OTHERWISE CONSTITUTE ANTI-COMPETITIVE  
8       BEHAVIOR?

9   A.   In this case, Verizon's undisclosed agreement with LightYear enables  
10       LightYear's local telephone service customers to access Verizon voice  
11       mail service even though they subscribe to LightYear's local telephone  
12       service. For this to happen, Verizon must be providing special treatment  
13       to LightYear when executing its orders to switch local service lines,  
14       because it is refraining from terminating or disrupting the Verizon voice  
15       messaging service that it will not otherwise provide to customers of  
16       competitive local service providers. This special arrangement grants a  
17       clear and substantial competitive advantage to LightYear because its  
18       customers do not have to suffer through the service disruption and loss of  
19       voice mail functionality that afflicts customers subscribing to CloseCall or  
20       most other competitive providers. This violates the anti-discrimination  
21       provisions of the Telecommunications Act of 1996 Act, enforcement of  
22       which the FCC has made the responsibility of the states. As a result,  
23       Verizon's discriminatory and secretive behavior places CloseCall not just



1           at a competitive disadvantage to Verizon, but at a competitive  
2           disadvantage against certain other CLECs operating in Maryland.

3

4    Q.    DID CLOSECALL ASK FOR THE SAME TREATMENT FROM VERIZON  
5           THAT VERIZON HAS AFFORDED LIGHTYEAR AND CERTAIN OTHER  
6           CLECS?

7    A.    Yes. At the time that CloseCall and Verizon were negotiating their  
8           Interconnection Agreement, CloseCall requested that Verizon allow  
9           CloseCall to preserve the voice mail service functionality on CloseCall's  
10          lines. Verizon refused this request, stating that this was not available in  
11          Maryland, and was only available in New York by tariff and in Delaware by  
12          special contract. CloseCall made Verizon aware that CloseCall knew that  
13          LightYear, CTC Communications and USN were submitting local  
14          telephone service provider change orders to Verizon and that Verizon was  
15          permitting these CLECs to retain the existing voice mail service on their  
16          lines. Nevertheless, Verizon told CloseCall that it would not be afforded  
17          similar treatment.

18

19   Q.    CAN VERIZON AND MR. MCCUSKER SIMPLY WALK AWAY FROM  
20          THEIR LEGAL OBLIGATION TO REFRAIN FROM DISCRIMINATORY  
21          BEHAVIOR BECAUSE, AS MR. MCCUSKER STATES, "VERIZON HAS  
22          MADE THE BUSINESS DECISION NOT TO REPEAT ITS FAILED

1 VENTURE WITH LIGHTYEAR AND HAS NOT ENTERED INTO ANY  
2 SUCH AGREEMENTS RECENTLY?"

3 A. No. Maryland requirements prohibiting discrimination, the FCC's rules,  
4 and the Supreme Court's Iowa Utilities Board decision unequivocally  
5 establish that Verizon must make available to CloseCall the same voice  
6 mail terms and conditions that it provides to CloseCall's competitors.  
7 Consequently, Verizon should immediately disclose all contracts that it  
8 has concerning voice mail services. In addition, the Commission should  
9 order Verizon to make up the damages to CloseCall.

10

11 Q. DO YOU AGREE WITH MR. MCCUSKER THAT THE FCC HAS HELD  
12 THAT INFORMATION SERVICES SHOULD REMAIN FREE FROM  
13 FEDERAL AND STATE REGULATION?

14 A. Yes, and they should. However, another famous case established that  
15 unregulated and deregulated services are not exempt from the duty to sell  
16 those services for resale, if other factors indicate that it would be  
17 appropriate for the ILEC to do so. US West Communications v. MFS  
18 Intelenet, Inc. 193 F3<sup>rd</sup> 1112 (1999). Verizon's anticompetitive behavior  
19 and duplicity before regulators is just cause for a regulator to assert  
20 authority in order to protect the public interest. Failure of the Commission  
21 to exercise its authority over this local public utility service would leave  
22 consumers unprotected, since the FCC lacks jurisdiction over intrastate  
23 matters. Terminating service just because a residential consumer or small

1 business switches their local telephone service to CloseCall and providing  
2 voice messaging access to certain CLECs on a discriminatory basis is a  
3 violation of Verizon's duty to comply with state and federal laws and rules  
4 against the imposition of unreasonable or discriminatory conditions or  
5 limitations on resale. The Commission must assert its jurisdiction and  
6 authority over these matters, since it has primary responsibility for local  
7 service competition, as evidenced by its federally confirmed jurisdiction  
8 over the interconnection agreements between Verizon and the CLECs  
9 operating in Maryland.

10 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY OF MR.  
11 RICHARD J. MCCUSKER JR.?

12 A. Yes.

13  
14 **IV. Mr. William E. Taylor**

15  
16 Q. DO YOU PERCEIVE THAT MR. TAYLOR IS APPROPRIATELY  
17 QUALIFIED AND SUFFICIENTLY FAMILIAR WITH THE FACTS  
18 PERTINENT TO CLOSECALL'S COMPLAINT TO PROVIDE CREDIBLE  
19 TESTIMONY IN THIS PROCEEDING?

20 A. Yes. Mr. Taylor is a well-recognized authority on the economic theories  
21 relating to interconnection and telephone service issues.

1 Q. DO YOU AGREE WITH MR. TAYLOR THAT "CLOSECALL IS  
2 REQUESTING THAT VERIZON-MD BE REQUIRED TO SELL ITS VOICE  
3 MESSAGING AND LINE SHARING DSL SERVICE TO CLOSECALL'S  
4 LOCAL EXCHANGE CUSTOMERS OR TO RESELL THOSE SERVICES  
5 AT A DISCOUNT TO CLOSECALL?"

6 A. No. CloseCall is specifically asking the Commission to order Verizon to  
7 stop the anti-competitive practice of "tying" its "unregulated" voice mail and  
8 high speed internet services to its "regulated" local telephone service.  
9 Verizon currently ties its products and services by: (1) refusing to process  
10 CloseCall's local telephone orders for customers to whom Verizon is  
11 coincidentally selling High Speed Internet and Line Sharing DSL services;  
12 and (2) terminating without warning, notice, or alternative customers' voice  
13 mail services in response to a customer's decision to switch their local  
14 telephone service to CloseCall.

15

16 Q. DID YOU PROPOSE POSSIBLE SOLUTIONS FOR THE COMMISSION  
17 THAT WOULD END THIS "TIE-IN" PRACTICE AND THUS BENEFIT THE  
18 INTERESTS OF MARYLAND RESIDENTIAL CONSUMERS AND  
19 BUSINESSES?

20 A. Yes. I would like to be very clear here, since there seems to be some  
21 confusion over my recommendations. To resolve Verizon's  
22 anticompetitive behavior CloseCall has suggested several options that the  
23 Commission could pursue to resolve CloseCall's complaint. Specifically,

1 the Commission can remedy this problem by ordering Verizon to provide  
2 to customers high speed Internet access (Line Sharing DSL) and voice  
3 messaging services on a stand-alone basis, with no interruption of service  
4 when a customer switches from one local telephone service provider to  
5 another local provider. In the alternative, the Commission could order  
6 Verizon to provide wholesale access to its high speed Internet (Line  
7 Sharing DSL) and voice messaging services using the same resale format  
8 that it uses for call waiting and caller-ID services. However, a  
9 Commission order to provide such access would not be necessary if  
10 Verizon voluntarily, but permanently, ended its "tie-in" practices by  
11 providing directly to residential consumers and small businesses access to  
12 its voice messaging and high speed Internet (Line Sharing DSL) service  
13 on a stand-alone basis, with no requirement that Verizon provide the  
14 customer's local telephone service. Verizon would also have to agree that  
15 customers would not experience any service interruptions or provisioning  
16 delays when switching their local telephone service to any CLEC,  
17 including CloseCall.

18  
19 In addition, the Commission should order Verizon to either terminate or  
20 make available on a nondiscriminatory basis all secret deals relating to  
21 CLEC access to local telephone services and order Verizon to make all  
22 CLEC agreements available for public inspection as required by  
23 Sections 251 and 252 of the Telecommunications Act of 1996, and the

1 FCC's Merger Conditions as agreed to by Verizon. The Commission  
2 should also assess any regulatory and financial penalties it deems  
3 appropriate in response to Verizon's discriminatory behavior.  
4

5 Q. ARE THERE OTHER EXAMPLES IN MARYLAND IN CONNECTION  
6 WITH THE TELEPHONE INDUSTRY WHERE AN "UNREGULATED"  
7 SERVICE REMAINS IN PLACE AND IS BILLED ON A STAND-ALONE  
8 BASIS WHEN A CUSTOMER SWITCHES THEIR LOCAL EXCHANGE  
9 SERVICE?

10 A. Yes. Wireless services, paging/messaging services, outbound long  
11 distance (1+) services, inbound toll-free (800 number) long distance  
12 services, regional toll service, internet services, pre-paid telephone  
13 services, yellow pages and directory assistance services are all examples.  
14 Moreover, the Commission specifically require CLECs, including  
15 CloseCall, to file "parity" plans for regional toll calling to ensure that  
16 competitive local companies cannot trap or force customers to accept their  
17 regional toll services once they have switched their local telephone service  
18 to their company. Furthermore, the Commission's rules require every  
19 CLEC, including CloseCall, to inform its customers in writing that they  
20 remain free to select any regional toll service provider are counter to these  
21 principles.  
22

23 Q. HOW DOES VERIZON'S BEHAVIOR LIMIT CUSTOMER CHOICE?

1     A.     By forcing its voice mail and high speed Internet (Line Sharing DSL)  
2           customers to subscribe to its local telephone service, Verizon diminishes  
3           the opportunity for competitive local service providers to enter the market  
4           by penalizing customers that choose a competing local telephone service  
5           provider. CloseCall documentation proves that Verizon's use of these  
6           strategies reduces competitive carrier subscribership rates by more than  
7           10%. Specifically, by "tying" value-added services to its local telephone  
8           service, Verizon is leveraging the dominant market position that it inherited  
9           from "Ma Bell" in a manner that is specifically calculated to erode local  
10          competition by slowly driving its competitors out of business. As each new  
11          local company goes bankrupt, however, the variety of competitive choices  
12          available to Maryland's residential consumers and small businesses is  
13          diminished, as is the prospect that a new competitor will attempt to  
14          challenge Verizon in the local telephone service market.

15  
16     Q.     IF THE COMMISSION DOES NOT CORRECT THIS BEHAVIOR, WHAT  
17           EFFECT WILL THIS HAVE ON COMPETITION IN MARYLAND?

18     A.     Consumer choice and local competition will continue to dissolve.  
19           Moreover, if the Commission does not address Verizon's anticompetitive  
20           actions in this instance, Verizon will perceive the opportunity to tie  
21           additional products and services to its local telephone service, further  
22           eroding competitive opportunity. To illustrate the importance of this  
23           matter, I suggest that the Commission consider how Verizon would react if

1           AT&T, MCI, or Sprint suddenly joined forces and announced that, to  
2           promote their entry into the Maryland local telephone service market, they  
3           would arbitrarily terminate the long distance and wireless service account  
4           of any customer who did not immediately subscribe to their new local  
5           telephone service on whatever terms and conditions that they deign  
6           favorable to themselves. Certainly Verizon and Mr. Taylor would quickly  
7           call foul and plead for the Commission's intercession.

8  
9   Q.    SHOULD THE COMMISSION BE CONCERNED ABOUT VERIZON'S  
10       BEHAVIOR?

11   A.   Yes. Verizon misinterprets the "regulated" and "unregulated" status of  
12       certain products and services as a license to act with impunity toward its  
13       customers and competitors and to put its own interests ahead of the public  
14       interest.

15  
16   Q.    DOES THE COMMISSION HAVE SUFFICIENT AUTHORITY TO  
17       REQUIRE VERIZON TO DISCONTINUE PRACTICES AND POLICIES  
18       THAT HARM THE PUBLIC INTEREST?

19   A.   Yes. Verizon appears to believe that the Commission only has authority  
20       over specific "regulated" services, and that there are no constraints on its  
21       use or provision of "unregulated" products and services. This presumption  
22       indicates that Verizon is unaware that it (and its Maryland-based  
23       subsidiaries and affiliates) remains subject to the Commission's broad



1 regulatory authority by virtue of its status as a certified public utilities  
2 company. Moreover, the Commission has the statutory obligation use that  
3 authority to ensure that all public utilities, including Verizon, operate in a  
4 manner that benefits the public good. Contrary to its words and apparent  
5 actions, Verizon does not have the authority to select which of its activities  
6 and actions are subject to the Commission's scrutiny. Rather, Verizon, to  
7 the extent that it is a public utilities company certified and operating in  
8 Maryland, remains subject to the Commission's scrutiny. Consequently,  
9 there is no question that the Commission has the authority to direct  
10 Verizon to modify its policies and practices in order to protect the public  
11 interest in a competitive and open local telecommunications environment.

12  
13 Moreover, the FCC's rules and federal law does not interfere with the  
14 Commission's authority to do so. In another famous case, the California  
15 Public Utilities Commission, pursuant to its obligation to protect the public  
16 interest, ordered NorthPoint to continue to provide DSL services to  
17 residents and businesses in California for 30 days, despite the fact that  
18 NorthPoint had filed for bankruptcy as a result of Verizon's decision to  
19 cancel the pending merger of the two companies. XO California, Inc. v.  
20 NorthPoint Communications, Inc., CPUC Case 01-03-041 (2001)

21  
22 Q. MR. TAYLOR CLAIMS THAT CLOSECALL'S COMPLAINT HAS NO  
23 ECONOMIC MERIT, DO YOU AGREE?